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Pro Works Contracting, Inc. and Iron Workers Local 229, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO. Cases 21-CA-120477 and 21-CA-121946

January 4, 2018

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS PEARCE, MCFERRAN,
AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that Pro Works Contracting, Inc. (the Respondent) has failed to file an answer to the compliance specification.

On January 27, 2015, the National Labor Relations Board issued a Decision and Order¹ that, among other things, ordered the Respondent to make whole discriminatees Michael Choma, Robert Whitman, and Ismael Covarrubias for any loss of earnings and other benefits suffered as a result of their unlawful discharges in violation of Section 8(a)(3) and (1). On March 3, 2017, the United States Court of Appeals for the Ninth Circuit issued a Judgment enforcing the Board's Order.²

A controversy having arisen over the amount of backpay due the discriminatees, on July 31, 2017, the Regional Director for Region 21 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order and notifying the Respondent that an answer must be filed by August 21, 2017, in conformity with the Board's Rules and Regulations. The Respondent failed to file an answer to the compliance specification.³

¹ 362 NLRB No. 2.

² No. 16-73079.

³ The motion for default judgment and attached exhibits indicate that the Region sent a copy of the compliance specification to the Respondent by certified mail to the Respondent's last known address, which was also listed in the Respondent's filing with the California Secretary of State, last updated on February 26, 2016. The Region also attempted personal service of the compliance specification to this address, but the motion states that the business office at that address was locked and looked vacant. In addition, the Region sent a reminder letter by regular mail on August 22, 2017, to the last known address of the Respondent as well as by email to two separate email addresses that the Respondent had provided to the Region, notifying the Respondent of its failure to file an answer and of the Region's intent to file a motion for default judgment with the Board if no answer was filed. The Respondent failed to respond.

The letter sent by certified mail was returned to the Region with a message stating "MOVED - LEFT NO ADDRESS - UNABLE TO FORWARD - RETURN TO SENDER." There is no indication that

On September 21, 2017, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on September 22, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.⁴ The Respondent again filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and we grant the General Counsel's Motion for Default Judgment. According, we conclude that the backpay due Choma, Whitman, and Covarrubias is as stated in the compliance specification,⁵ and we will order the Respondent to pay those amounts to the discriminatees, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Pro Works Contracting, Inc., Santee, California, its officers, agents, successors, and assigns, shall

the message sent by email was undeliverable. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Cray Construction Group, LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003).

⁴ The Charging Party filed a joinder in the motion for default judgment.

⁵ Although the compliance specification requests interim expenses for Whitman and Covarrubias, we are without jurisdiction to grant this request. This remedy was not included in the Board's Order in the unfair labor practice case. See 362 NLRB No. 2 (2015), enforced *NLRB v. Pro Works Contracting, Inc.*, No. 16-73079 (9th Cir. March 20, 2017). Because the Board's Order has already been enforced by the Ninth Circuit, we no longer possess jurisdiction to modify that Order. See *Interstate Bakeries Corp.*, 360 NLRB 112, 112 fn. 4 (2014); *Grinnell Fire Protection Systems Co.*, 337 NLRB 141, 142 (2001).

make whole discriminatees Michael Choma, Robert Whitman, and Ismael Covarrubias, by paying them the amounts following their names, plus interest accrued to the date of payment, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), and minus tax withholdings required by Federal and State Laws.⁶

<u>Employee</u>	<u>Backpay owed</u>
Michael Choma	\$8,200
Robert Whitman	\$2,240
Ismael Covarrubias	\$2,128
Total amount due:	\$12,568

Dated, Washington, D.C. January 4, 2018

Mark Gaston Pearce, Member

Lauren McFerran, Member

William J. Emanuel, Member

⁶ This amount does not yet include any excess tax. As set forth in the compliance specification, the Respondent is also liable for the adverse tax consequences for any discriminatee receiving a lump-sum backpay award. These amounts may be updated to reflect the actual date of payment. Any adverse tax consequences shall be reported in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016); *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014).

(SEAL) NATIONAL LABOR RELATIONS BOARD